

RICHARD A. SMITH, WSBA 15127
SMITH LAW FIRM
314 No. Second Street
Yakima, WA 98901
Telephone: 509-457-5108

Attorney for Defendant
Donovan Cloud

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
(Honorable Salvador Mendoza, Jr.)**

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DONOVAN CLOUD,
Defendant.

NO. 1:19-CR-02032-SMJ-2

REPLY TO THE GOVERNMENT'S
RESPONSE TO MOTION FOR BILL
OF PARTICULARS [ECF 100]

TO: Clerk of U.S. District Court, Eastern District of Washington

TO: Thomas J. Hanlon, Assistant United States Attorney

COMES NOW DONOVAN CLOUD by and through his attorney of record,
Richard A. Smith of *Smith Law Firm*, and submits this Reply to the Government's
Response to the Defendant's Motion for a Bill of Particulars [ECF 100].

The Government submits that the bill of particulars is unnecessary because: (1)
kidnapping on an Indian reservation is a general intent crime; (2) an Indictment is not

REPLY TO THE GOVERNMENT'S RESPONSE
TO MOTION FOR BILL OF PARTICULARS
[ECF 100] - Page 1

SMITH LAW FIRM
314 North Second Street
Yakima, WA 98901
(509) 457-5108

1 insufficient by reason of the omission of the words “and held”; and (3) an Indictment
2 is sufficient even though it does not charge that the person kidnapped was held “for
3 ransom or reward or otherwise” (ECF 100, page 5.)

4 Whether a bill of particulars is appropriate or necessary does not turn on the
5 factors cited by the Government. As noted in Mr. Cloud’s motion [ECF 95] being
6 “held” is the very essence of kidnapping and the statutory language “holds for ransom
7 or reward or otherwise” is not surplusage. *Chatwin v. United States*, 326 U.S. 455
8 (1946); *Hayes v. United States*, 296 F.2d 657 (8th Cir. 1961); *Clinton v. United States*,
9 260 F.2d 824 (5th Cir. 1958). Here, the Government has failed to even include the
10 statutory language in its indictment.
11

12 The Government states that it has provided over 4,000 pages of discovery.
13 However, none of the discovery provided clarifies the foundation which the charge
14 rests upon. A bill of particulars identifying the alleged “holding” and motive and
15 purpose of the same is particularly appropriate in this case given the similarity of
16 facts and circumstances regarding the Government’s charges of carjack and kidnap.
17

18 DATED this 24th day of September, 2019.

19 Presented by:

20 /s/ Richard A. Smith

21 RICHARD A. SMITH, WSBA 15127

22 Attorney for Defendant Donovan Cloud

23 314 North Second Street

24 Yakima, WA 98901

25 rasmith@house314.com

26 smithone@house314.com

27 Phone: (509) 457-5108

28 Fax: (509) 452-4601

29
30 REPLY TO THE GOVERNMENT’S RESPONSE
31 TO MOTION FOR BILL OF PARTICULARS
[ECF 100] - Page 2

SMITH LAW FIRM
314 North Second Street
Yakima, WA 98901
(509) 457-5108

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on September 24, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to all parties.

/s/ Lugene M. Borba

LUGENE M. BORBA

Legal Assistant, Smith Law Firm